



# Department of Environmental Protection

Jeb Bush  
Governor

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Colleen M. Castille  
Secretary

## **CERTIFIED - RETURN RECEIPT REQUESTED**

May 10, 2005

Ms. Virginia Barker  
Brevard County Office of Natural Resource Management  
2725 Judge Fran Jamieson Way, Bldg. A  
Viera, Florida 32940-6605

Permit Modification No. 0134869-007-EM  
Permit No. 0134869-002-JC, Brevard County  
Brevard County Shore Protection Project - North Reach

Dear Ms. Barker:

The request to modify Permit No. 0134869-002-JC, submitted on your behalf by Olsen Associates, has been received and reviewed by Department staff. The proposed permit modification is to extend the beach construction activity window by an additional week, through May 21, for the 2005 spring nourishment event only.

A permit modification (Permit No. 0134869-006-EM) was issued on April 15, 2005, which allowed a one-time extension of the beach construction activity window by two weeks, through May 14, 2005. This modification was issued following approval of the time extension by the U.S. Fish and Wildlife Service (USFWS). Due to additional weather-related delays, the permittee does not feel the final portion of the project will be completed by May 14. Therefore a request was made on May 3, 2005 for authorization to perform beach construction through May 21 for the spring 2005 nourishment ONLY.

The construction window shall only apply to a 3000-foot stretch between DEP reference monuments R-6.5 and R-9.7. No turtle nests were established in this area prior to May 22 during the 2003 nesting season. As of May 4, the nearest nest to the project site was over six (6) miles to the south. Based on this limited data, the USFWS has no objection to the additional time extension. The Department, with input from the Florida Fish & Wildlife Conservation Commission (FWC), concurs with this evaluation.

The specific conditions shall be revised as follows (underlines indicate additions):



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10. n. For the 2005 spring nourishment event **ONLY**, the beach construction window shall be extended through May ~~21~~14 for the area between DEP reference monuments R-~~6~~.5 and R-~~19~~.7. Specifically, for this one event and the specified location, the date “May ~~22~~15” shall replace “May 1,” and the date “May ~~21~~14” shall replace “April 30” for all terms of Specific Condition #10.

After expedited review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not significantly increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in adverse environmental impact or water quality degradation, the **permit is hereby modified** as requested. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **February 1, 2014** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter and the accompanying drawings must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an



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extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;



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- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

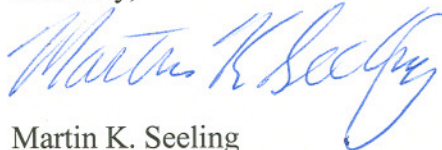
This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

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If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 487-4471, ext. 104, or Steven MacLeod, ext. 216.

Sincerely,



Martin K. Seeling  
Environmental Administrator  
Bureau of Beaches & Coastal Systems

MKS/smm

cc:

Kevin Bodge, Olsen Associates, Inc.  
Robbin Trindell, FWC, ISMS  
Rob Bittner, USFWS, Jacksonville  
Osvaldo Rodriguez, USACE, CESAJ-DP-B  
Irene Sadowski, USACE, CESAJ-RD-NA-M  
Dave Herbster, DEP, Central District

Paden Woodruff, BBCS-BECP  
Phil Sanders, BBCS-BECP  
Gene Varano, BBCS-CCCL  
James LaGrone, BBCS-CE  
Christina Staten, BBCS-JCP  
BBCS Permit File

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



Deputy Clerk



Date